



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**[Docket No. 220223-0054]**

**RTID 0648-XC635**

### **Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2023 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific cod Total Allowable Catch Amounts**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason adjustment; request for comments.

**SUMMARY:** NMFS is adjusting the 2023 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

**DATES:** Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2023, until the effective date of the final 2023 and 2024 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this document, identified by docket number NOAA-NMFS-2022-0076, by any of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0076 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Krista Milani, 907-581-2062.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) set the 2023 Aleutian Islands (AI) pollock TAC at 19,000 metric tons (mt), the 2023 Bering Sea (BS) pollock TAC at 1,289,000 mt, the 2023 BSAI Atka mackerel TAC at 60,958 mt, the 2023 BS Pacific cod TAC at 133,459 mt, and the 2023 AI Pacific cod TAC at 13,796 mt. In December 2022, the Council recommended a 2023 BS pollock TAC of 1,300,000 mt, which is more than the 1,289,000 mt TAC established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI. The Council also recommended a 2023 BSAI Atka mackerel TAC of 69,282 mt, which is more than the 60,958 mt TAC established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2023 BS Pacific cod TAC of 127,409 mt, and an AI Pacific cod TAC of 8,425 mt, which is less than the BS Pacific cod TAC of 133,459 mt, and less than the AI Pacific cod TAC of 13,796 mt established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI. The Council's recommended 2023 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2022, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for pollock, Atka mackerel, and Pacific cod fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of

the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014).

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2022 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2023 BS pollock TAC to 1,300,000 mt, the 2023 BSAI Atka mackerel TAC to 69,282 mt, the 2023 BS Pacific cod TAC to 127,409 mt, and the 2023 AI Pacific cod TAC to 8,425 mt. Therefore, Table 2 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i) and (iii), Table 5 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised for the 2023 BS and AI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment.

**Table 5—Final 2023 Allocations of Pollock TACS to the Directed Pollock Fisheries and to the CDQ Directed Fishing Allowances (DFA)<sup>1</sup>**

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season <sup>1</sup>		2023 B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Bering Sea subarea TAC <sup>1</sup>	1,300,000	n/a	n/a	n/a
CDQ DFA	130,000	58,500	36,400	71,500
ICA <sup>1</sup>	50,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,120,000	504,000	313,600	616,000
AFA Inshore	560,000	252,000	156,800	308,000
AFA Catcher/Processors <sup>3</sup>	448,000	201,600	125,440	246,400
Catch by CPs	409,920	184,464	n/a	225,456
Catch by CVs <sup>3</sup>	38,080	17,136	n/a	20,944
Unlisted CP Limit <sup>4</sup>	2,240	1,008	n/a	1,232
AFA Motherships	112,000	50,400	31,360	61,600
Excessive Harvesting Limit <sup>5</sup>	196,000	n/a	n/a	n/a
Excessive Processing Limit <sup>6</sup>	336,000	n/a	n/a	n/a
Aleutian Islands subarea ABC	43,413	n/a	n/a	n/a
Aleutian Islands subarea TAC <sup>1</sup>	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,856	n/a	44
ICA	2,500	1,250	n/a	1,250

Aleut Corporation	14,600	14,260	n/a	340
Area harvest limit <sup>7</sup>	n/a	n/a	n/a	n/a
541	13,024	n/a	n/a	n/a
542	6,512	n/a	n/a	n/a
543	2,171	n/a	n/a	n/a
Bogoslof District ICA <sup>8</sup>	300	n/a	n/a	n/a

<sup>1</sup> Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the incidental catch allowance (ICA, 4 percent), is allocated as a DFA as follows: inshore sector – 50 percent, catcher/processor sector (CP) – 40 percent, and mothership sector – 10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) through (iii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the Aleutian Islands pollock ABC.

<sup>2</sup> In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

<sup>3</sup> Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

<sup>4</sup> Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

<sup>5</sup> Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

<sup>6</sup> Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

<sup>7</sup> Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

<sup>8</sup> Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised for the 2023 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, jig, BSAI trawl limited access, and Amendment 80 allocations of the BSAI Atka mackerel TAC consistent with this adjustment.

**Table 7—Final 2023 Seasonal and Spatial Allowances, Gear Shares, CDQ Reserve, Incidental Catch Allowance, and Amendment 80 Allocations of the BSAI Atka Mackerel TAC**

Sector <sup>1</sup>	Season <sup>2,3,4</sup>	[Amounts are in metric tons]		
		2023 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District <sup>5</sup>	Western Aleutian District
TAC	n/a	27,260	17,351	24,671
CDQ reserve	Total	2,917	1,857	2,640
	A	1,458	928	1,320
	Critical Habitat	n/a	557	792
	B	1,458	928	1,320
	Critical Habitat	n/a	557	792
Non-CDQ TAC	n/a	24,343	15,494	22,031

ICA	Total	800	75	20
Jig <sup>6</sup>	Total	118	-	-
BSAI trawl limited access	Total	2,343	1,542	-
	A	1,171	771	-
	Critical Habitat	n/a	463	-
	B	1,171	771	-
	Critical Habitat	n/a	463	-
Amendment 80 sector	Total	21,083	13,877	22,011
	A	10,541	6,939	11,006
	Critical Habitat	n/a	4,163	6,603
	B	10,541	6,939	11,006
	Critical Habitat	n/a	4,163	6,603

<sup>1</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the initial TAC (iTAC) for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>2</sup> Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

<sup>5</sup> Section 679.20(a)(8)(ii)(C)(I)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(I)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(2) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

<sup>6</sup> Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2023 at 0.5 percent. The jig gear allocation is not apportioned by season.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2022 and 2023 harvest

specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised for the

2023 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with

this adjustment.

**Table 9—Final 2023 Sector Allocations and Seasonal Allowances of the BSAI Pacific Cod TAC**

[Amounts are in metric tons]

Sector	Percent	2023 share of total	2023 share of sector total	2023 seasonal apportionment	
				Season	Amount
BS TAC	n/a	127,409	n/a	n/a	n/a
BS CDQ	n/a	13,633	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	113,776	n/a	n/a	n/a
AI TAC	n/a	8,425	n/a	n/a	n/a
AI CDQ	n/a	901	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	7,524	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,233	n/a	n/a	n/a
Total BSAI non-CDQ TAC <sup>1</sup>	100	121,300	n/a	n/a	n/a

Total hook-and-line/pot gear	60.8	73,750	n/a	n/a	n/a
Hook-and-line/pot ICA <sup>2</sup>	n/a	400	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	73,350	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	58,753	Jan 1-Jun 10	29,964
				Jun 10-Dec 31	28,789
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	241	Jan 1-Jun 10	123
				Jun 10-Dec 31	118
Pot catcher/processor	1.5	n/a	1,810	Jan 1-Jun 10	923
				Sept 1-Dec 31	887
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	10,134	Jan 1-Jun 10	5,168
				Sept 1-Dec 31	4,966
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2.0	n/a	2,413	n/a	n/a
Trawl catcher vessel	22.1	26,807	n/a	Jan 20-Apr 1	19,837
				Apr 1-Jun 10	2,949
				Jun 10-Nov 1	4,021
AFA trawl catcher/processor	2.3	2,790	n/a	Jan 20-Apr 1	2,092
				Apr 1- Jun 10	697
				Jun 10-Nov 1	-
Amendment 80	13.4	16,254	n/a	Jan 20-Apr 1	12,191
				Apr 1- Jun 10	4,064
				Jun 10-Dec 31	-
Jig	1.4	1,698	n/a	Jan 1-Apr 30	1,019
				Apr 30-Aug 31	340
				Aug 31-Dec 31	340

<sup>1</sup> The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the AI or BS is or will be reached, then directed fishing for Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

<sup>2</sup> The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2023 based on anticipated incidental catch in these fisheries.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

## Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to

publish a notice providing time for public comment because the most recent, relevant data only became available as of December 21, 2022.

Without this inseason adjustment, NMFS could not allow the fishery for pollock, Atka mackerel, and Pacific cod in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

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Jennifer M. Wallace,  
Acting Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.